



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By U.S. Mail
Benjamin P. Keane
DENTONS US
1900 K Street, NW
Washington, DC 20006

APR 18 2018

RE: MUR 7167
Roy Blunt
Friends of Roy Blunt, Inc. and Gordon A.
Elliott in his official capacity as treasurer

Dear Mr. Keane:

On November 7, 2016, the Federal Election Commission notified your clients, Senator Roy Blunt and Friends of Roy Blunt, Inc. and Gordon A. Elliott in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 10, 2018, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Senator Blunt and Friends of Roy Blunt, Inc. and Gordon A. Elliott in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) or 30118. In addition, the Commission found that there is no reason to believe that Senator Blunt violated 52 U.S.C. § 30125(e)(1)(A) or 11 C.F.R. § 300.61. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Anne Robinson, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran", with a long horizontal line extending to the right.

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4
5
6 **RESPONDENTS:** Roy Blunt MUR 7167
7 Friends of Roy Blunt, Inc. and
8 Gordon A. Elliot in his official capacity
9 as treasurer
10 Susan B. Anthony List, Inc.
11 Women Speak Out PAC and
12 Emily Buchanan in her official capacity
13 as treasurer
14

15 **I. INTRODUCTION**

16 The Complaint alleges that Susan B. Anthony List, Inc. (“SBA List”), Women Speak Out
17 PAC and Emily Buchanan in her official capacity as treasurer (“WSO”), Senator Roy Blunt, and
18 Friends of Roy Blunt, Inc. and Gordon A. Elliot in his official capacity as treasurer (“FRB”)
19 (collectively, the “Respondents”) violated the Federal Election Campaign Act of 1971, as
20 amended, (the “Act”) and Commission regulations by making or accepting coordinated corporate
21 contributions.¹ The Complaint also alleges that Blunt solicited contributions outside the source
22 and amount limitations of the Act by asking the president of SBA List to raise money for his
23 campaign.² Respondents assert that the Complaint is speculative and deny they engaged in any
24 illegal coordination.

25 As set forth below, the Commission finds no reason to believe that Blunt or FRB
26 accepted excessive or prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116(f) or
27 30118. The Commission also finds no reason to believe that SBA List or WSO made excessive
28 or prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116(a) or 30118. Finally, the

¹ Compl. at 4-5 (Oct. 31, 2016).

² *Id.* at 6.

1 Commission finds no reason to believe that Blunt violated 52 U.S.C. § 30125(e)(1)(A) or
2 11 C.F.R. § 300.61 by soliciting soft money in connection with a federal election.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Background**

5 Blunt was a candidate for Senator in Missouri in 2016, and he was re-elected.³ FRB is
6 his principal campaign committee. SBA List is an IRS Code section 501(c)(4) non-profit
7 corporation.⁴ WSO is a federally registered independent-expenditure-only political committee
8 that is described as SBA List's "partner Super PAC."⁵ Marjorie Dannenfelser serves as
9 president of both organizations.⁶

10 During the 2016 election cycle, SBA List reported spending \$46,446.70 for independent
11 expenditures to support Blunt and oppose his general election opponent Jason Kander.⁷ WSO
12 reported spending \$85,878.91 for independent expenditures opposing Kander.⁸

13 The Complaint alleges that SBA List and WSO made prohibited corporate in-kind
14 contributions to FRB by disbursing funds to re-elect Blunt.⁹ The Complaint references a SBA

³ See Amended Statement of Candidacy, Roy Blunt (Oct. 25, 2016).

⁴ See Susan B. Anthony List, Inc. 2016 Annual Report at 1, Commonwealth of Virginia State Corporation Commission (May 27, 2016), <https://sccefile.scc.virginia.gov/ARSearch/Home/SearchResults> (enter Corporate ID 04845202); Form 990, 2015 Tax Return of Susan B. Anthony List, Inc. at 1 (Nov. 2, 2016).

⁵ See Statement of Organization, Women Speak Out PAC (Sept. 28, 2012); Women Speak Out 2016 Annual Report at 3, Commonwealth of Virginia State Corporation Commission (Aug. 30, 2016), <https://sccefile.scc.virginia.gov/ARSearch/Home/SearchResults> (enter Corporate ID 07805708); Susan B. Anthony List and Women Speak Out PAC 2016 Campaign Plan at 2, <https://www.sba-list.org/wp-content/uploads/2016/09/SBA-2016-Campaign-Plan.pdf>.

⁶ See SBA List 2015 Form 990 at 7.

⁷ 2016 Year-End Report at 18, Susan B. Anthony List (Jan. 31, 2017).

⁸ 2016 Post-General Report at 64, Women Speak Out PAC (Dec. 8, 2016).

⁹ Compl. at 3, 5.

1802444-1156

1 List press release announcing that it would “make 250,000 voter contacts in Missouri . . . through
2 mail, digital advertising, and knocking 25,000 doors to turn out the pro-life base,” and the
3 Complaint suggests that SBA List did so at Blunt’s request.¹⁰ The Complaint also references an
4 alleged telephone conversation between Blunt and Dannenfeler during which Blunt purportedly
5 asked Dannenfeler to “raise more money” and suggests that Blunt used this call to request
6 “potentially illegal support from SBA List for his race.”¹¹

7 Blunt and FRB deny that any coordination took place and characterize the Complaint’s
8 assertions as “unfounded.”¹² They note that the CNN article that forms the basis of the
9 Complaint’s allegations lacks any specific evidence of coordination and merely alludes to a
10 telephone conversation between Blunt and Dannenfeler on an unspecified date.¹³ Moreover,
11 Blunt and FRB assert that the article does not allege that Blunt asked Dannenfeler to make
12 expenditures supporting him; the only conduct alleged is that Blunt asked Dannenfeler to raise
13 more money.¹⁴ SBA List and WSO assert that even if the alleged telephone conversation
14 occurred, it would not constitute coordination.¹⁵ They also state that the quotation in the CNN
15 article is unattributed.¹⁶

¹⁰ *Id.* at 3 (citing Press Release, Susan B. Anthony List, SBA List Ground Campaign Expands to Missouri to Elect Pro-life Blunt & Greitens (Oct. 13, 2016), <https://www.sba-list.org/newsroom/press-releases/sba-list-ground-campaign-expands-missouri-elect-pro-life-blunt-greitens>).

¹¹ *Id.* at 3, 5 (referencing Tal Kopan, *Donald Trump Voters Could Be Key to Missouri Senate Win for Democrats*, CNN (Oct. 14, 2016), <http://www.cnn.com/2016/10/14/politics/missouri-battleground-senate-race-jason-kander-roy-blunt/> (“CNN article”).)

¹² Blunt/FRB Resp. at 2 (Dec. 15, 2016).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ SBA List/WSO Resp. at 1 (Jan. 11, 2017).

¹⁶ *Id.*

180044441557

1 **B. Legal Analysis**

2 **1. Coordinated Communications**

3 The Act prohibits any person from making, and any candidate or committee from
4 accepting or receiving, excessive or prohibited contributions.¹⁷ In addition, independent-
5 expenditure-only political committees are prohibited from making contributions to federal
6 candidates.¹⁸ The term “contribution” includes anything of value given for the purpose of
7 influencing a federal election.¹⁹ Further, any expenditure made by a person “in cooperation,
8 consultation, or concert with, or at the request or suggestion of, a candidate, authorized political
9 committee, or a national or state party committee” is considered an in-kind contribution.²⁰ These
10 expenditures are deemed “coordinated”²¹ and qualify as contributions to the candidate and must
11 be reported as expenditures made by the candidate’s authorized committee.²²

12 A communication that is coordinated with a candidate or his authorized committee is
13 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting
14 requirements of the Act.²³ Under Commission regulations, a communication is coordinated with
15 a candidate, the candidate’s authorized committee, or agent of either, if it meets a three-prong
16 test set forth in the Commission’s regulations: (1) it is paid for, in whole or in part, by a person

¹⁷ 52 U.S.C. § 30116(a), (f); *see, e.g.* 52 U.S.C. § 30118(a) (illegal to make or knowingly receive corporate or union contributions). *See* Factual and Legal Analysis at 4, MUR 7018 (*Reform Washington, et. al.*).

¹⁸ Advisory Op. 2010-11 (Commonsense Ten).

¹⁹ 52 U.S.C. § 30101(8)(A)(i).

²⁰ *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

²¹ 11 C.F.R. § 109.20(a).

²² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

²³ 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

1 other than the candidate or authorized committee; (2) it satisfies one of five content standards in
2 11 C.F.R. § 109.21(c);²⁴ and (3) it satisfies one of six conduct standards in 11 C.F.R.
3 § 109.21(d).²⁵ All three prongs must be satisfied for a communication to be considered
4 coordinated under these regulations.²⁶

5 **a. Payment Prong**

6 The Complaint references expenditures reported by WSO on October 11, 2016, to pay for
7 “canvassers in Missouri,” but fails to provide specific information about the alleged activity or
8 identify any other alleged coordinated expenditures.²⁷ Nonetheless, the payment prong appears
9 to be satisfied because disclosure reports filed with the Commission indicate that SBA List and
10 WSO each reported independent expenditures supporting Blunt and opposing Kander.²⁸

11 **b. Content Prong**

12 WSO spent \$18,898.29 on canvassing in support of Blunt, but regardless of whether
13 canvassing would be considered a public communication²⁹ both SBA List and WSO reported

²⁴ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that, in relevant part, refers to a clearly identified candidate, and is publicly distributed or disseminated in a jurisdiction 90 days or fewer before the candidate’s primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

²⁵ The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. 11 C.F.R. § 109.21(d)(1)-(6).

²⁶ 11 C.F.R. § 109.21(a); *see also* Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (“Coordination E&J”). *See* Factual and Legal Analysis at 5, MUR 7029 (McGinty).

²⁷ Compl. at 3; *see* 48-Hour Report of Independent Expenditures, Women Speak Out PAC (Oct. 11, 2016).

²⁸ *Supra* n. 7 and 8.

²⁹ 2016 Pre-General Report at 39, 41, 42, Women Speak Out PAC (Oct. 27, 2016); 2016 Post-General Report at 63, 64, Women Speak Out PAC (Dec. 8, 2016); *see* Advisory Op. 2016-21 (Great America PAC) at 4 n. 3

1 specific facts,” not merely presumed.³⁴ The reported statement does not mention anything about
2 communications, and Blunt and FRB deny that there was any coordination. Further, the
3 Complaint does not assert that any of the other conduct standards were satisfied by the alleged
4 telephone call, and the limited record does not provide enough information to conclude that any
5 of the other conduct standards apply. Therefore, the available information does not support a
6 conclusion that the conduct prong is satisfied.

7 The Commission finds no reason to believe that Senator Roy Blunt, Friends of Roy
8 Blunt, Inc. and Gordon A. Elliot in his official capacity as treasurer, Susan B. Anthony List, Inc.,
9 and Women Speak Out PAC and Emily Buchanan in her official capacity as treasurer violated
10 52 U.S.C. §§ 30116(a), 30116(f), or 30118 by receiving or making excessive or prohibited in-
11 kind contributions.

12 2. Solicitation

13 Candidates for federal office shall not “solicit, receive, direct, transfer, or spend funds in
14 connection with an election for federal office, including funds for any Federal election activity,
15 unless the funds are subject to the limitations, prohibitions, and reporting requirements of the
16 Act.”³⁵ Commission regulations define “solicit” as “to ask, request, or recommend, explicitly or
17 implicitly, that another person make a contribution, donation, transfer of funds, or otherwise
18 provide anything of value.”³⁶ The regulations define “direct” as to guide, directly or indirectly, a
19 person who has expressed an intent to make a contribution, donation, transfer of funds, or

³⁴ *Id.* at 431, 432.

³⁵ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

³⁶ 11 C.F.R. § 300.2(m).

1-6011-4444-0001

1 otherwise provide anything of value, by identifying a candidate, political committee or
2 organization, for the receipt of such funds, or things of value.”³⁷

3 The Complaint alleges that Blunt violated the Act by asking that Dannenfelsers have SBA
4 and WSO raise soft money to be used in support of his campaign.³⁸ Although the CNN article
5 states that Blunt asked Dannenfelsers “to raise more money,” the Complainant provides no further
6 information regarding the statement or its context. In similar cases, where limited facts were
7 available and the parties denied wrongdoing, the Commission found no reason to believe that the
8 respondents violated the Act.³⁹ Accordingly, the Commission finds no reason to believe that
9 Senator Roy Blunt violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting
10 nonfederal funds in connection with a federal election.

³⁷ *Id.* § 300.2(n).

³⁸ Compl. at 6; *see* 52 U.S.C. §§ 30116(a)(1), 30116(a)(2)(A).

³⁹ *See* Factual & Legal Analysis at 3-5, MUR 6503 (Frank Guinta) (no reason to believe Guinta violated 2 U.S.C. § 441i(e) (now 52 U.S.C. § 30125(e)) where the Complainant’s allegation that Guinta solicited soft money was based on a news report citing unattributed sources and Guinta denied any wrongdoing); Factual & Legal Analysis at 6-7, MUR 6657 (Akin for Senate) (no reason to believe Akin or Akin for Senate violated 52 U.S.C. § 30125(e)(1)(A) where Respondents denied wrongdoing and asserted that Complaint was speculative and contained no personal knowledge of alleged solicitation).